# *In the J. P. Court*

*By*
OTTOMAR HAMELE
*of the New York Bar*

*"—to regain possession of a double set of false teeth surreptitiously purloined . . by a vindictive ex-husband.*

BEFORE a justice of the peace of the Empire State who held court a few years ago in one of the towns near Buffalo, an irate grass widow invoked the law of replevin to regain possession of a double set of false teeth, surreptitiously purloined from a teacup on her washstand by a vindictive ex-husband. Through a redelivery bond, the defendant annoyingly kept possession of the lady's grinders, and, that he might still further harass her, appeared before the bucolic jurist just prior to the day set for the trial, and announced that he had decided to pay the costs and dismiss the case. Unmindful of the important fact that a defendant cannot dismiss a suit, His Honor laboriously computed the small bill of fees, receipted payment, and with much dignity entered a record of dismissal upon the docket.

But this juridical satisfaction was quickly dissipated the following morning when the fair plaintiff appeared with her lawyer ready for trial. That the unhappy justice escaped a Xantippean tongue lashing was due, not to the exasperated lady's lack of contempt for the court, but solely because of the fact that her ability to articulate was too badly impaired by the absence of the subject matter of the litigation.

From the days of Edward the Third of England, during whose reign in the fourteenth century the office of justice of the peace was established, down to the present time, the J. P. has been a target of criticism and merriment. From the first the Eng-

lish people resented his intrusion. Lord Cowper once pronounced him a man "sometimes illiterate and frequently bigoted and prejudiced." A favorite American description given him today by disgruntled attorneys and their clients—though often with great injustice—is Old Necessity. Not that he is the Mother of Invention, but because he is said to know no law.

The colonists from Merrie England transplanted the J. P. in the New World. He came, if not on the boat with the minister of the Gospel, on one not far behind, and like the preacher, quite likely rendered his first service beneath an umbrageous ceiling of forest branches, with a fallen log for a bench.

The early history of justice's courts in the colony of Virginia is particularly interesting. By act of the assembly of that settlement, monthly or county courts were instituted in 1624. The judges were justices of the peace appointed by the Governor, and four were usually required to start the machinery of a court.

At first only petty suits were handled, but later the jurisdiction was greatly broadened. It covered both civil and criminal cases as well as chancery matters. Civil jurisdiction ran up to the value of sixteen hundred pounds of tobacco, and for a time criminal jurisdiction extended even to murder.

Masters were not allowed to whip Christian white servants, naked, without an order from the squire. One of the pleasant duties of the J. P. was to direct the amputation of the ears of slaves for hog stealing. Witchcraft proceedings were at one time a specialty.

At the close of the Revolutionary War it was the law of Virginia that a citizen could not be inoculated against smallpox without the consent of all neighbors within two miles from his home and the written permission of all justices of the peace of the county in which he resided. This drastic statute compelled John Marshall to journey to Philadelphia to be vaccinated.

In all the English settlements on the Atlantic coast the law of the mother country relating to justices of the peace was used as a model. The different conditions obtaining in the New World necessitated some alterations and additions, and the treatment of the subject varied considerably in the several colonies. Some made the office one of small powers, while others magnified it to dignified proportions.

Today throughout the United States, the J. P. has a civil and criminal jurisdiction covering minor contentions. When Mike Murphy's goat lunches on Widow Clancy's wash the resulting quarrel is taken to the justice of the peace. When Abner Johnson's White Leghorns exercise their toes in Aunt Mehitable's pansy patch, there is more work for the J. P. When Deacon White, fundamentalist, and Elder Black, modernist, draw bloody noses in an argument over evolution, the country squire dusts his bench. When wifey takes a ten dollar bill from hubby's trousers while he peacefully snores, the township judge decides whether the act is larceny.

The antics of John Barleycorn have been more noticeable in justices' courts than in the higher and more dignified tribunals of the law. Unrestrained by the potency of wigs, gowns and uniformed bailiffs, King Booze has often played the buffoon across the stage of these lowly temples of justice.

In a small town in Eastern Oregon a nasty neighborhood scandal was brought before a justice of the peace, largely through the efforts of the two opposing attorneys, so it was said. This was before Congress passed Mr. Volstead's famous bill, and it so happened that the members of the jury refreshed themselves frequently at a convenient bar, with quite visible results. After a protracted legal battle, enlivened at times by threats of physical encounter, the case was submitted to

the more or less addled jury, which promptly returned a written verdict reading: "No cause for such action, and let the lawyers pay the costs." There were those who contended that lager beer had improved the sense of justice of the six bibulous holders of the legal scales.

Notwithstanding the Eighteenth Amendment, the J. P. still has his troubles with Old King Alcohol. A short time ago a Virginia justice was indicted for unlawfully giving away and dispensing ardent spirits. Under a search warrant issued by him there had been seized a quantity of liquor supposed to be whisky. Being uncertain as to the character of the confiscated property the cautious magistrate quite naturally called for light on the subject from local connoiseurs. Several sampled it. One of the invitees, after taking "two fingers" of the stuff, pronounced it corn liquor. Such was the crime. The wheels of justice in the trial court ground out a conviction of the conscientious jurist, but this action was happily reversed by an appellate tribunal. However, the latter court took occasion to disclaim any intention of approving the practice of securing in this manner expert evidence as to the character of suspected beverages. (Price v. Commonwealth, 132 Va. 582, 110 S. E. 349.)

*"When Mike Murphy's goat lunches on Widow Clancy's wash."*

Not every tilting of the scales of justice in the J. P. court can be attributed to the head of the institution; for his juries, though made up under the law of "good men and true," quite frequently stub their legalistic toes as is well known.

It was a Massachusetts jury which listened for several hours to the testimony in an assault case involving a backyard altercation between two belligerently-minded Hibernian widows. The quarrel arose over the location of a clothesline. Both the evidence from the witnesses and the speeches from the pettifoggers were confusing and contradictory. After spending three hours in more or less solemn deliberation the jury brought in what they called a compromise verdict. It read: "We find the defendant *almost* guilty."

In the early days of the Lone Star State a colored jury was impanelled to pass on the evidence in a suit over the wages of an Ethopian brother for chopping cotton. Upon submission of the case the justice of the peace directed the jury to retire to an adjoining room and "find the verdict." The sextet went out apparently laboring under some doubt. Noises came from the room they were occupying, and after a short interval they returned. The foreman stepped forward and, scratching his curly dome in perplexity, announced:

"We hab looked eberywhar, jedge, fo' dat verdict, in de drawers an' behin' de doors, but it ain't nowhar in dat blessed place."

Nor is the J. P. the butt of all the humor that issues from his modest court. For sometimes he wields well a lance of sharp wit.

A Connecticut Yankee—not in King Arthur's court, but in his own—was in charge of the trial before

a jury of a shoemaker charged with having slapped his wife with a piece of sole leather. The cobbler was represented by a township pettifogger who bore the name, Jonas Barker. One of the members of the jury was delayed after a recess and a Newfoundland dog solemnly climbed into his vacant chair. Barker, who loved his joke, turned to the court and said:

"May we not proceed, Your Honor? The jury box seems to be filled."

With a quick glance at the canine intruder the Nutmeg magistrate responded:

"Don't you think that one Barker is enough for this case?"

Before a North Carolina justice of the peace appeared a darkey charged with the very common social digression of reducing the population of a white man's hen roost. As usual the negro insisted upon his innocence.

"Jedge, I hope Gawd A'mighty strike me daid if I done stole dem chickens," he protested.

For a moment the squire looked over the rims of his glasses at the prisoner, and then said:

"Stand over there in the corner, nigger, and if Gawd Almighty don't strike you dead in ten minutes, I'm going to give you thirty days in the county jail."

It may be assumed that 'Rastus got the thirty.

The truest of wisdom frequently appears in the decisions of crossroads justices.

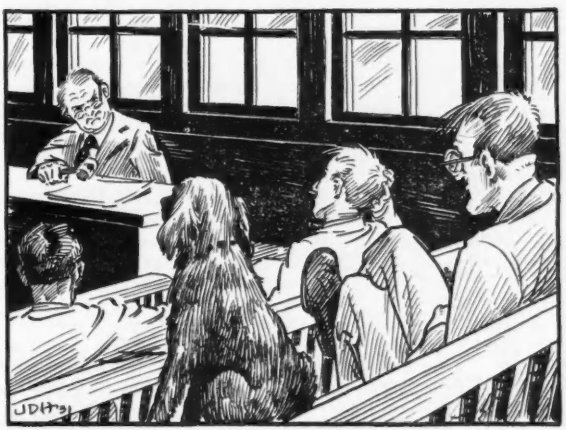
A prisoner charged with stealing a couple of hams from a smokehouse was tried by a Nebraska justice of the peace who spoke with a strong Teutonic accent. The proof plainly showed the guilt of the defendant, and his attorney followed a custom, common in such cases, of talking much about irrelevant matters. Considerable time was consumed in this manner to the great irritation of the practical J. P.

"May it please the court," said the lawyer in summing up, "this is a case of great importance. While the American eagle, whose sleepless eye watches over the welfare of this mighty Republic, and whose wings extend from the Alleghenies to the Rocky chain of the West, was rejoicing in his pride of peace—"

"Shtop dere!" protested His Honor, "vot has dis gase to do mit eagles? Dot ain't vot vos shtole. Dis has not'ing to do mit birds. De gase is about hogs and hams."

"True, Your Honor, but my client has rights."

"Your glient has no rights to der eagle."



*"—a Newfoundland dog solemnly climbed into his vacant chair."*

"Of course not, but the laws of language—"

"Vot do I gare for der laws of language, eh? Dis gase is being dried by der laws of Nebraska, and no oder laws vill be gonsidered."

An examination of the law books discloses the interesting fact that many leading decisions by the highest courts are but affirmations of the conclusions reached in the justices' courts where the cases started.

Seventy years ago the townships of Marathon and Virgil in Cortland county, New York, touched at corners like squares of similar color on a chess-board. An unimportant altercation developed between William S. Holmes and Alanson Carley, two worthy but belligerent residents of Marathon. This quarrel resulted in a suit being brought before a justice of the peace of Virgil township, and there arose the question whether Virgil was "next adjoining" Marathon, as was required by the statute to give the court jurisdiction.

This weighty matter was presented to four courts. It went no further because there was no other legal arena in which to wage the fight. The J. P. insisted that Virgil was next adjoining Marathon and that he had jurisdiction. This decision was reversed by the county judge, but the great Court of Appeals of the Empire State sustained the township magistrate. (Holmes v. Carley, 31 N. Y. 289.)

In the Green Mountain State twenty years before the Civil War lived the widow Baldwin and Sarah Jane, her favorite cow. Between the two there existed a strong affection, and, while the record on this point is not entirely clear, it is not unlikely that the widow and the famous old woman who preferred to bestow her osculations upon a cow, were one and the same. The affection Sarah Jane entertained for the bereaved lady did not extend to horses, which were her particular aversion. One day she hooked a friendly gelding, whereupon the widow sawed off the sharp tips of Sarah Jane's horns and replaced them with round, shiny, stylish, brass buttons.

But this did not prevent the bellicose bovine from engaging shortly thereafter in violent combat with Neighbor Coggswell's gray mare while the latter was peaceably proceeding toward the creek to drink. The unfortunate mare passed on to her reward as a result of the conflict, and Coggswell brought suit in justice's court against the widow for the value of the deceased animal. Plaintiff was given judgment on the ground that the defendant knew Sarah Jane was a cow of bad habits and therefore should have kept her under better control. Appeal was taken through the county court and to Montpelier where the Vermont Supreme Court approved the crossroads verdict. (Coggswell v. Baldwin, 15 Vt. 404, 40 Am. Dec. 686.) In the law books this case is now cited as a leading one on the subject in question.

The organic act of the District of Columbia approved February 27, 1801, provided for the naming by the President of a certain number of "discreet persons as justices of the peace." The first nominations were made by President John Adams four days after the enactment of the law and the day before the expiration of his term of office. The justices so nominated were called "John Adams' pets," and "the midnight judges." They were among a large number of Federal appointees named by the President for what he thought to be the good of the country, as he felt the incoming Jefferson administration would be radical and unsafe.

The Senate confirmed the appointments of the justices, and certificates of office were issued but not delivered. James Madison, the new Secretary of State, refused to hand over the commissions, and William Marbury, with four other appointees, applied under an act of Congress to the United States Supreme Court for a writ of mandamus to compel delivery. This was the famous case of

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# *Co-ordination Of The Bar*

RECENT steps towards better organization of the units of the various bar associations should prove of interest to the profession.

At the Conference of Bar Association delegates at its meeting in Chicago, on August 18th, 1930, the following report of the Committee on Bar Reorganization was adopted:

Your committee appointed to ascertain, if possible, a more effective means of expressing the sentiment of the Bar, reports that it has conferred with the members of similar committees appointed by the General Council and the Executive Committee, respectively, and is satisfied that there is a growing feeling for some plan that will co-ordinate the bar associations of the country so that the American Bar Association may more fully represent and make effective the sentiment of the profession.

This feeling is based upon *the desirability, if not necessity, for better organization*—(a) in order that the profession may retain its position of leadership in the community and state; (b) in order that it may prevent its functions being usurped by outside agencies; (c) in order to regulate the admission and discipline of its members; (d) in order to act as a bar (collectively) rather than individually.

This feeling is evidenced by the present tendency toward Bar organization—statutory, voluntary, and federated—the marked increase in bar association membership and attendance at bar association meetings, the decided improvement of the value of bar associations to the profession and the community, as well as the thousands of written and spoken words on the subject.

In the past two decades more than 600 new bar associations have come into existence, reaching a present total of 1216. During the same time the American Bar Association has increased its membership six-fold, and the membership of most state associations has doubled. Bar associations have progressed from organizations preoccupied with annual dinners and funeral gatherings to organizations that are shaping legislation, purging their own ranks, prescribing rules of practice, publishing their own journals, and performing many other services to the profession and community.

What then should this Association do to harness this growing energy so it can be used to meet the needs and enlarge the usefulness of the whole profession, remembering always that the American Bar Association and the Bar of the whole country are not now convertible terms?

Accurate information from state bar associations, state association executives, and Bar leaders concerning their attitude toward and opinion of affiliation between the state and American Bar Associations should be in possession of the committee or body undertaking a solution of this problem. This will require a mail canvass and careful study.

This work cannot be accomplished by a committee from a branch or division of the American Bar Association, like this committee, nor by a committee from the General Council, neither of which has any authority to report to the Association or to its governing body, the Executive Committee. No progress can be expected until the work is assumed by the Association as a whole, until the problem is made its first order of en-

# *Another Angle of Corporate Practice*

*By* ALPHEUS BYERS
*of the Seattle Bar*

I HAVE read with interest the article in your journal on Corporate Practice of Law.

As far as lawyers are concerned the evils, caused by those who practise law without authority or qualification, are not unaccompanied by substantial benefits. The writer's experience is probably typical of that of many other practitioners and leads to the conclusion that a very substantial percentage of every lawyer's business is extricating people from difficulties into which they have gotten by failing to secure the advice of competent legal counsel; and by having legal papers drawn by realtors, insurance agents, bankers and brokers.

**In Mr. Byers' opinion the unlawful practice of law by those without authority is often of substantial benefit to the lawyer. His is an interesting angle on the subject.**

The old toast, "Here's to the lawyer's best friend, the man who writes his own will," is based on fact.

Two of the largest and most important cases the writer ever had arose solely from the fact that the client had depended upon legal advice, in one instance, from a real estate firm, and in the other, from a banker. Both of these concerns were of high standing and would have been most competent advisors in strictly real estate or financial transactions. In another case it cost a man $65,000 because he got a contract drawn free by a notary public. In another case it cost a man $15,000 in attorney's fees, and he escaped by a narrow margin, the loss of his entire fortune, which was a large one; because he concluded to quit paying his lawyer a retainer of $300 a year and concluded to let a broker's office attend to the preparation of his contracts.

When amateurs attempt to perform the duties of a lawyer it is not the lawyers as a whole who are injured. It nearly always results, in many times, more business for them than it takes away. The loss to the public must, however, in the aggregate be very large, and if it is satisfied the lawyer has no cause for complaint, save where he is, as he should be, as solicitous for the public good as he is for his own.

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deavor and every influence and resource is put behind it. Leadership and responsibility must be assumed by the Executive Committee and every means should be employed to stimulate thought and interest among the members of this Association, state associations and members of the profession generally.

In response to this report the Executive Committee of the American Bar Association appointed a committee on co-ordination of the Bar. This committee is anxious to obtain the point of view of, and advice from, as large a portion of the profession as possible, touching the problem both in its local and national aspects. Address communications to Philip J. Wickser, 6 Buffalo Insurance Bldg., Buffalo, N. Y.

# Findings

## Yum Yum

In reading the current Advance Sheets of the Court of Appeals of Kentucky today, in the case of Graham v. John R. Watts & Son, 238 Ky. 96, I ran across the following:

"Until scarcely more than a generation ago the good housewife furnished her table with vegetables gathered directly from the garden. She preserved her fruit, and made all the butter for the family consumption, and the ash hopper functioned as an agency in supplying soap for domestic use. Also its product with the aid of the old-fashioned kettle converted corn into lye-hominy. Most, if not all other family supplies were made and prepared in the home. But all of that is now changed, and the task of preparing and furnishing such articles has been taken over by the manufacturer who is even assuming to remove from the kitchen the appetizing odor of baking beef, or roasting chicken, by himself supplying them in original packages ready to serve after proper heating. And so, it has come to pass that cooking is but little more than warming over what the manufacturer has prepared in his factory."

The writer of the opinion, Judge Gus Thomas, is a gentleman and a jurist of the old school and has been a personal friend of mine for many years.

Being somewhat of the old school myself, how my mouth was made to water while reading it just before noon. It caused me to go to my dinner (the 12 o'clock kind) just a little earlier and there, much to my enjoyment, I found a plenteous supply of turnip "sallet" (sometimes called greens by the uninformed), cooked with the hock of a ham, with poached eggs to go along with it, and of course there had to be corn pones and buttermilk. Candor even forces me to admit the presence of spring onions. There were also some knick-knacks for the women folks but somehow I just couldn't ever get around to them.

How I did yearn for my friend, the Judge, for unless I miss my guess I believe he would have pronounced that pretty good kind of "vittels."

Contributed by J. W. McDonald,
Mayfield, Ky.

## Bombastic Briefs

The New Jersey Court in the recent case of Johnson v. Savings Investment Co. (N. J. Ch.) 153 Atl. 382, takes exception to the following language in the brief of counsel:

"When Drusilla Jones went to the Savings Investment & Trust Company of East Orange in November, 1928, and opened up an account in her own name, 'Trustee for Betty Harrigan,' she went in the profound happiness that nobility of purpose alone can give, with a heart warmed by the glow of benevolence, and with the consciousness that she had repaid long years of unselfish service and devotion to the utmost limits of her ability to express her gratitude. She was expressing her appreciation, not merely in words (which cost nothing), but in acts intended to give to Betty Harrigan all she had. At least that's what she thought she was doing. But did she do so? Or was she only mistaken in thinking she had done so?

"But what is this cloud which casts its gloom across her expressed purpose and threatens to obscure it completely? Is it the ominous shadow of

the law which dooms her plan to disaster? Or is it only an imaginary ghost which has no real existence and which will fade away upon being courageously faced?

"Will the law—the alleged embodiment of reason—assist in accomplishing the lawful and expressed designs of human beings, conceived in kindness and goodness of heart, and carried out as completely as an ordinary mind could think possible? Or is the law only a sardonic joke, laughing mirthlessly as it frustrates noble human purposes, and which gives a contrary meaning to human intents; which says, 'This thing which you think you have done, you have not done; this thing that seems to mean one thing, in fact means exactly the reverse. Your friends who have been kind to you and who have done things for you and to whom you thought to give your property, will get none of it; your relatives, who for years ignored you and did nothing for you and whose greed you sought to thwart, and who would not pay a penny for a single flower to lay on your grave, will get all your money.' One can imagine the ignorant layman, confronted with such a situation, snorting contemptuously, 'So that's the law! Well, it may be law, but it certainly isn't justice!'" The court said:

This is a violation of the fundamental rules concerning the drawing of briefs. As the name implies, a brief should succinctly state the facts in the case, cite the law which the scrivener deems applicable to these facts, and briefly make what argument seems necessary in the application of the law as he sees it to the facts as they appear. Bombast of the kind above quoted is frivolous, unnecessary, and impertinent. It wastes time, throws no light whatever on the matter under discussion, and is not appropriate to the serious consideration of legal questions. It is an imposition on the court to file a brief of twenty-five typewritten pages interspersed with surplusage of this character.

## The Courts and Criminal Justice

Justice McReynolds in a dissenting opinion to U. S. v. Aldridge, U. S. Adv. Op. 628, says: "Unhappily the enforcement of our criminal laws is scandalously ineffective. Crimes of violence multiply; punishment walks lamely. Courts ought not to increase the difficulties by magnifying theoretical possibilities. It is their province to deal with matters actual and material; to promote order, and not to hinder it by excessive theorizing of or by magnifying what in practice is not really important."

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Marbury v. Madison (1 Cranch, 137, 2 L. ed. 60). The court dismissed the suit on the ground that it had no constitutional authority to issue the writ. In so doing it decided that Congress cannot confer original jurisdiction upon the Supreme Court, and that an act of Congress repugnant to the Constitution is not law.

The J. P. gives us a brand of homely humor, the quality of which is undeniably excellent. But he does much more than that. After we have had our smile at his expense we must admit the important public service he performs. In his court the many minor troubles of daily life may be adjudicated on the spot where they arise. He affords quick relief, for his dockets are rarely crowded. As a general rule, his duties are discharged with good sense and impartiality. To his bickering neighbors he gives sage and wholesome counsel, which, like salvation, is imparted without money and without price. He is an institution, the need of which has been proved by the years. No less an authority than the great Lord Chief Justice Coke of England once said: "The whole Christian world hath not the like office as justice of the peace if duly executed."

# Among the New Decisions

**Abandoned highway** — *Precautions due travelers.* In Susquehanna Power Co. v. Jeffress, — Md. —, 71 A.L.R. 1198, 150 Atl. 788, it is held that the duty owed by the owner of an abandoned highway leading to a bridge destroyed by authority of the state roads commission, to one whose use of the highway in the belief that it is a subsisting highway should be anticipated as probable, is to warn him in some appropriate and unmistakable manner that he has no right to proceed beyond a certain point, to be fixed at a sufficient distance from the road's end to prevent any danger to a traveler of ordinary prudence, who, in the exercise of reasonable care and caution, should observe and heed suitable and adequate notice.

An annotation on this question in 71 A.L.R. on page 1206 may be referred to.

**Abstracter's liability** — *Defect in title.* In Bridgeport Airport v. Title Guaranty & T. Co. 111 Conn. 537, 71 A.L.R. 345, 150 Atl. 509, one who, having been employed to examine and report on the title to certain property, erroneously certifies that a certain judgment is a lien thereon, is liable for money expended by his employer in acquiring the supposed lien.

See annotation on this question in 71 A.L.R. beginning on page 349.

**Advancement** — *Burden of proof.* In Day v. Grubbs, — Ky. —, 72 A.L.R. 323, 32 S. W. (2d) 327, it is held that the burden is upon those seeking to impeach a recited valuable consideration of a deed from parent to child, to show that the conveyance was an advancement.

The annotation in 72 A.L.R. 327 is on the subject of presumption and burden of proof with respect to advancement to children.

**Aliens** — *Effect of marriage to citizen.* In United States ex rel. Ulrich v. Kellogg, 71 A.L.R. 1210, 58 App. D. C. 360, 30 F. (2d) 984, it is held that a subject and citizen of a foreign country who is an alien under the Immigration Laws remains such under the provisions of the Cable Act, notwithstanding her marriage to a native-born American citizen.

See annotation on this question in 71 A.L.R. beginning on page 1213.

**Alimony** — *Alteration to meet changed conditions.* In Gloth v. Gloth — Va. —, 71 A.L.R. 700, 153 S. E. 879, the Virginia court held that the court by which a divorce was granted may alter provisions of the decree for the payment of alimony to meet changed conditions of the parties subsequently arising; since the continuing status of husband and wife, out of which arises a continuing duty of the husband to support his wife, prevents the decree for alimony from being a final adjudication of the right of the wife to support under conditions subsequent to the decree, and gives the court a continuing jurisdiction to al-

ter the decree with respect to future instalments.

An annotation discusses this question in 71 A.L.R. 723.

**Assault by employer** — *Workmen's compensation as exclusive remedy.* The Minnesota court in Boek v. Hing, 180 Minn. 470, 72 A.L.R. 108, 231 N. W. 233, held that an employer who intentionally and maliciously assaults and beats an employee while engaged in the employment, inflicting injuries which disable, is not, in an action to recover damages therefor, entitled to a directed verdict on the ground that the only redress the employee has is under the Workmen's Compensation Act.

See annotation on this question in 72 A.L.R. beginning on page 110.

**Auto operator's license** — *validity of requirement.* A Virginia case, Thompson v. Smith, — Va. —, 71 A.L.R. 604, 154 S. E. 579, holds that automobile drivers' permits may be granted, refused, and revoked under rules of general application, but may not be arbitrarily refused or revoked, or granted to some or refused to others of like qualifications, under like circumstances and conditions, hence a provision of a municipal ordinance relating to automobile drivers' permits, authorizing the chief of police to revoke the permit of any driver who, in his opinion, becomes unfit to drive an automobile on the streets of the city, without prescribing what shall constitute unfitness, and a provision authorizing the exercise of the same unlimited discretion by the judge of the municipal court upon an application for reinstatement of the permit, are both void as a delegation of legislative power to officers acting in an administrative capacity.

See annotation in 71 A.L.R. 616.

**Bills and notes** — *parol evidence as to discharge.* Parol evidence is admissible, in an action on a note, of an agreement pursuant to which the note was obtained, by virtue of which a right of set-off exists, but parol evidence of an agreement that a note

shall be paid out of a particular fund, or in any way other than specified in the instrument, cannot be received.

The annotation in 71 A.L.R. 548 discusses this question.

**Birth Control League** — *deduction of gift to in computation of income tax.* In Slee v. Commissioner of Internal Revenue, 72 A.L.R. 400, 42 F. (2d) 184, the United States court of appeals for the second circuit determined that gifts to the American Birth Control League may not be regarded as proper deductions in computation of income tax, under the Internal Revenue Act 1921, § 214 (a) (11) (B), and Revenue Acts of 1924 and 1926, § 214 (a) (10) [U. S. C. title 26, § 955 (a) 10)], which allow deduction of gifts made to any corporation organized and operated "exclusively" for charitable or educational purposes, in view of the conclusion of the Board of Tax Appeals that the aspect of the League's work, under the provision of its charter authorizing it to enlist the support of the legislators to effect the lawful repeal of existing laws was not confined solely to relieving its hospital work from legal obstacles, but included activities to bring about the ultimate purposes contemplated by the League.

See annotation in 72 A.L.R. 403, on what are religious, charitable, scientific, literary, or educational purposes within provisions of income tax law for deduction of contributions to corporations organized for such purposes.

**Blocking crossings** — *liability of railroad.* A railroad company is liable for the damage directly resulting from its negligence in blocking a street crossing with a train for an unreasonable length of time, with knowledge of a near-by fire and the approach of a fire truck and desire of the firemen to cross its tracks; and to justify its effort to protect the train from fire it must proceed without unreasonable delay. Luedeke v. Chicago & N. W. R. Co. — Neb. —, 71 A.L.R. 912, 231 N. W. 695.

This question is annotated in 71 A.L.R. on page 917.



**Brokers** — *listing of competing properties.* In Foley v. Mathias, — Iowa, —, 71 A.L.R. 969, 233 N. W. 106, a real estate broker to whom the owner of property has agreed to pay a commission for his services in procuring a certain person to take a lease of it is not precluded from recovering such commission by the fact that he had entered into a like agreement with another property owner.

See annotation on this question in 71 A.L.R. beginning on page 699.

**Cemetery property** — *exemption from assessment.* In Hollywood Cemetery Asso. v. Powell, — Cal. —, 71 A.L.R. 310, 291 Pac. 397, a cemetery corporation organized for profit was held not entitled to an exemption from assessment for public improvements, conferred by statute on rural cemetery corporations.

Annotated in 71 A.L.R. 322.

**Children** — *employed in places of amusements.* The Iowa court in State v. Erle, — Iowa, —, 72 A.L.R. 137, 232 N. W. 279, held that the appearance in a theater of a child violinist under the age of fourteen, in an act owned and directed by his mother, is not in violation of a statute prohibiting the employment of any person under fourteen in certain establishments or occupations, including places of amusement, but providing that nothing therein shall be construed as prohibiting any child from working in any of such establishments or occupations when operated by his parents.

See annotation on this question in 72 A.L.R. beginning on page 141.

**Constitutional law** — *requirement of incorporation as condition of doing*

*business.* In Railway Exp. Agency v. Virginia, 282 U. S. 440, 75 L. ed. (Adv. 282), 71 A.L.R. 102, 51 S. Ct. 201, it was held that a state constitutional provision which requires a foreign public service corporation to become incorporated under the laws of the state as a condition of obtaining authority to carry on intrastate business therein does not violate the 14th Amendment because an effect of local incorporation will be to deprive such corporation of the right to sue in the Federal courts and to remove suits to them on the ground of diversity of citizenship.

There is an annotation in 72 A.L.R. 105 on this question.

**Corporate income** — *basis of tax.* In Aberdeen Sav. & L. Asso. v. Chase, — Wash. —, 71 A.L.R. 232, 289 Pac. 536, a tax measured by net income derived from business transacted within the state, upon banks and financial corporations, though nominally imposed for the privilege of exercising their corporate franchises within the state, but likewise imposed by the same statute upon national banks, is in effect a property or occupation tax, and, not being imposed on individuals or other corporations competing with those taxed, is held violative of the equal protection clause of the 14th Amendment.

See annotation on this question in 71 A.L.R. beginning on page 256.

**Corporate officers** — *power as to salaries.* Ownership, by the president of a corporation and his wife, of all the stock of the corporation, except a few shares held by its secretary, does not vest the president of the corporation with power to fix the salary of the secretary in Bloom v. Nathan Vehon Co. 341 Ill. 200, 72 A.L.R. 232, 173 N. E. 270.

An annotation deals with this question in 72 A.L.R. beginning on page 238.



**Depreciation** — *tax purposes.* In Waltham Watch & Clock Company v. Waltham, — Mass. —, 71 A.L.R. 960, 172 N. E. 579, it was held that an

annual deduction of a fixed percentage of the cost of machinery may properly be made the measure of deterioration in fixing its value for tax purposes where, though not always accurate, it is the only practicable method.

See annotation on this question in 71 A.L.R. 971, beginning on page 971.

**Eighteenth Amendment** — *validity.* In United States v. Sprague, 282 U. S. 716, 75 L. ed. (Adv. Ops. 289), 71 A.L.R. 1381, 51 S. Ct. 220, the 18th Amendment to the Federal Constitution prohibiting the manufacture, sale, transportation, importation, and exportation of intoxicating liquor for beverage purposes was held not void because ratified by the legislatures of the required number of states instead of by conventions.

**Emergency public contracts** — *what amounts to emergency.* In Los Angeles Dredging Co. v. Long Beach, — Cal. —, 71 A.L.R. 161, 291 Pac. 839, it was held that an emergency may properly be said to exist so as to dispense with a charter requirement that municipal contracts be let only after advertising for bids, except for actual emergency work, in the case of agreements made by a city with one with whom it had theretofore entered into a dredging contract under which the contractor had the right to place mains in the streets for the conveyance of dredged material, to pay the contractor a certain sum per hour for such times as cessation of work should be directed by the city, and to pay an additional sum over the contract price for the transportation of dredged material by reason of the relocation of the mains, with a resulting increase in distance and expense, where it was found that the deposit of the dredged materials was polluting the water at a public bathing place when the dredge was running, and that the normal leakage and overflow of the mains in the streets were rendering them unsafe.

The annotation on this question in 71 A.L.R. begins on page 173.

**Employers' Liability Act** — *assumption of risk as to speed and signals.* In a decision involving the Federal Employers' Liability Act, the Washington court recently held in Cross v. Spokane, P. & S. R. Co. — Wash. —, 71 A.L.R. 451, 291 Pac. 336, that a track inspector does not assume the risk arising from the operation of trains at a speed in excess of that prescribed by the rules of the railroad company, or from failure to give required warning signals.

See annotation on this question in 71 A.L.R. beginning on page 459.

**Federal Employers' Liability Act** — *Hours of Service Act.* In Brown v. Pere Marquette Railway Company, 237 Mich. 530, 71 A.L.R. 854, 213 N. W. 179, a railroad brakeman asleep in the caboose of a freight train, on the completion of sixteen hours' continuous service, was held not "on duty," within the meaning of the Federal Hours of Service Act, so as to entitle him to recover under the Federal Employers' Liability Act for injuries sustained when a train collides with the caboose, although he has not been relieved from duty by any order from the superintendent or train despatcher.

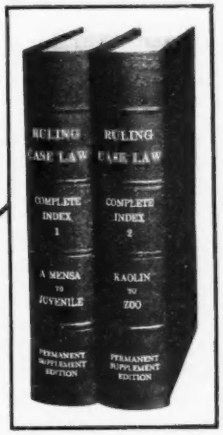
An annotation on liability of employer for injury to employee as affected by expiration of statutory hours of labor before injury, appears in 71 A.L.R. 861.

**Football** — *privilege as to criticism of team and coach.* An interesting point in the law of libel and slander is decided in Hoeppner v. Dunkirk Printing Co. 245 N. Y. 95, 172 N. E. 139, which holds that a high school football team and its coach are the subject of a fair comment and criticism in the public press and sporting circles.

See annotation in 72 A.L.R. 921.

**Fraud and misrepresentation** — *market price of stock.* In Fourth Nat. Bank v. Webb, 131 Kan. 167, 71 A.L.R. 619, 290 Pac. 1, the court holds that if false representations are made by a vendor as to the market price

# lx for Ruling Case Law

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of oil stock, of which the vendee is entirely ignorant, and where the vendor knowing of the ignorance of the vendee, and further, that he is relying on the representations made to him, requires that the vendor tell the vendee the truth within the vendor's peculiar knowledge, if he volunteers to tell the vendee anything about it, and if the vendee relies upon the false representations of the vendor, and is induced to buy upon the false statements made, he may have a cause of action or a defense based thereon.

See annotation on this question in 71 A.L.R. beginning on page 622.

**Homicide** — *doubt of intent as to which person accused intended to kill.* —In State v. Flathers, — S. D. —, 72 A.L.R. 150, 232 N. W. 51, instructions in a prosecution for murder under an information which charges in one count that the defendant intended to kill one person, and in another count that he intended to kill another, were held to permit a verdict of guilty, although the individual jurors are not agreed as to which of the persons named in the information the defendant intended to kill.

An annotation follows this case in 72 A.L.R. 154, on the question of the propriety of instructions which permit conviction notwithstanding difference between jurors as to which of two or more contradictory facts, each of which is consistent with guilt, was established by the evidence.

**Husband and wife** — *misconduct as affecting estate rights.* In Brown v. Parks, 169 Ga. 712, 71 A.L.R. 271, 151 S. E. 340, it was held that where a woman was married to a man, and that marriage was never legally dissolved, and she survived him, she was entitled, upon his death, to assert the rights of a wife in the property left by the deceased husband, even though she had separated from the husband and had been married to another man; for the last marriage itself was void, and the status of the woman as the wife of the decedent was not destroyed. The forfeiture of dower under the provisions of § 5249 (6) of the Civil Code is not involved in this case.

See annotation in 71 A.L.R. 277, on the question of misconduct of surviving spouse as affecting marital rights in other's estate.

**Income taxes** — *trust estates.* In Hutchins v. Long, — Mass. —, 71 A.L.R. 677, 172 N. E. 605, where the income of a trust was held to have a situs for taxation in another state, it cannot be subjected to taxation in the state where the trustees reside, even though, under the terms of the taxing statute, it would otherwise be taxable there.

Annotation in 71 A.L.R. 685, on the question of income tax in respect of trust estates as affected by foreign elements.

**Infants** — *liability for medical, dental and hospital service.* The North Carolina court in Cole v. Wagner, 197 N. C. 692, 71 A.L.R. 220, 150 S. E. 339, holds that an infant who, upon being seriously injured, was immediately taken to a hospital, is liable for the hospital, medical, and surgical attention there given him for a period of over eighteen months, although before the injury, and after his discharge from the hospital, he lived with and was supported by his father, where the expense of treatment was a material and substantial consideration of the judgment recovered by the infant on account of his injuries.

In 71 A.L.R. 226, there appears an annotation on liability of infant for medical, dental, or hospital services to him.

**Insurance** — *inception of risk.* In Narver v. California State L. Ins. Co. — Cal. —, 71 A.L.R. 1374, 294 Pac. 393, it was held that in determining

whether a life insurance policy had been in force for more or less than a year at the time of the suicide of the insured, it will be deemed to have taken effect not at the date named in the policy, but at the date of the inception of liability under a rider attached to the policy, by which, in consideration of a short-term premium, the insurer agreed, subject to the provisions of the policy and the application therefor, to pay the amount insured in case of death prior to the beginning of the first policy year, such indorsement or rider not being a contract separate and distinct from the policy, but having merely the effect to make the policy operative save as specifically executed.

The annotation in 71 A.L.R. 1378, discusses the question of rider or provision protecting insured during interim or short-term period as affecting inception of risk under main policy of life insurance.

**Insurance** — *incontestable clause — reformation.* According to the United States Circuit Court of Appeals, tenth circuit, a provision in a life insurance policy that it shall become incontestable after one year from date except for nonpayment of premiums does not preclude the insurer from seeking reformation at a later date to conform the policy issued to the agreement of the parties. Columbian National Life Insurance Company v. Herbert A. Black, 71 A.L.R. 128, 35 F. (2d) 571.

Annotated in 71 A.L.R. 139, on incontestable clause as affecting reformation of policy.

**Judges** — *de facto character of.* In Ridout v. State, — Tenn. — 71 A.L.R. 830, 30 S. W. (2d) 255, one who, having been elected to hold a term of court by a majority of the attorneys present, the regular judge being absent on account of illness, in good faith undertakes to preside at a succeeding term in the continued absence of the regular judge, with the acquiescence of litigants, the bar, all court officials, and the public, is a judge de facto, whose authority to organize a grand jury is not open to question by persons indicted by such grand jury.

Annotation in 71 A.L.R. 848, on officer holding over without authority after expiration of his term as a de facto officer.

**Margin purchase** — *taxation of.* In Putnam v. Ford, — Va. —, 71 A.L.R. 1217, 155 S. E. 823, the court was of the opinion that the purchaser of corporate stock on margin is taxable on the market value thereof, although he has not paid for it in full.

See annotation on this question in 71 A.L.R. beginning on page 1225.



**Master and servant** — *employee's duty to master.* In Connelly v. Special Road & Bridge Dist. — Fla. —, 71 A.L.R. 923, 126 So. 794, it was held that an employee is bound to the exercise of the utmost good faith towards his employer, and cannot, without the latter's consent, retain profits or earnings received in the course

of the performance of the employer's business or in an undertaking which constitutes a breach of duty to the employer.

Annotated in 71 A.L.R. 933, on the question of employer's right to earnings or profits made by employee.

**Municipal liability** — *street conditions due to sewer system.* A jury may reasonably find that a large stone, used as a cover for a sewer catch basin, the face of which nearest the sidewalk was chipped off at one end, forming a cavity in which a pedestrian's foot was caught, made the sidewalk dangerous for public travel, and constituted a defect therein within the meaning of a statute imposing liability for defects according to the decision in Rogers v. Meriden, 109 Conn. 324, 71 A.L.R. 749, 146 Atl. 735.

Annotated in 71 A.L.R. 753, on liability of municipality for injury due to defective catch-basin covers, and the like, maintained in street in connection with drainage or sewer system.

**Parent's action against child.**—In Schneider v. Schneider, — Md. —, 72 A.L.R. 449, 152 Atl. 498, it was held that a mother cannot sue a minor son for personal injury inflicted upon her by his negligence in driving an automobile in which she was riding.

See annotation on this question in 72 A.L.R. beginning on page 453.



**Parent and child** — *liability of father.* A child may recover against his parent for injuries sustained while a minor, due to negligence rendering a master liable to a servant, where the evidence, including an agreement between the father and child that the latter should work during the summer vacation in the former's business at the same wage paid other workmen, less a deduction of the worth of his board at home, and the fact that premiums on employers' liability insurance carried by the former were computed in part on the child's wages, the insurer's agent being aware of the relationship of parent and child, warranted a finding not only that there was a contract of employment, but also that the father consciously intended to assume the full liability of a master. Dunlap v. Dunlap, — N. H. —, 71 A.L.R. 1055, 150 Atl. 905.

An annotation on infant against parent appears in 71 A.L.R. 1071.

**Parking** — *validity of ordinances and regulations.* The supreme court of Wisconsin upholds an ordinance which requires the parking of automobiles on a certain street to be crosswise of the center of the street as against the objection of unreasonableness, uncertainty and discrimination because it failed to apply to all vehicles.

Annotated in 72 A.L.R. 229, on validity of automobile parking ordinances or regulations.

**Prize fight** — *assumption of risk.* Where persons engage in a mutual combat, each may recover from the other all damages caused by injuries received from the other in the fight. In such case the rule relating to the assumption of risk does not apply. Teeters v. Frost, — Okla. —, 72 A.L.R. 179, 292 Pac. 356.

See annotation on this question in 71 A.L.R. beginning on page 189.

**Public contracts** — *extension of time.* In Oswald v. El Centro, — Cal. —, 71 A.L.R. 899, 292 Pac. 1073, a lease to a city, at a nominal rental, of the paving plant of a contractor, exacted as a condition of granting an extension of time for the performance of a contract, failure to complete which at the time fixed was not due to the contractor's unreasonable delay or default, was held void for want of legal consideration and duress, even

though the city's purpose was to recoup for inefficient work performed by the contractor under other contracts.

An annotation in 71 A.L.R. 904, discusses the right of municipality to exact of contractor additional consideration as condition of extension of time for completion of improvements.

**Railroad crossing** — *safety devices.* In St. Louis-San Francisco R. Co. v. Prince, — Okla. —, 71 A.L.R. 357, 291 Pac. 973, a statute which requires a railroad company to erect suitable signs of caution at crossings of its road with public highways, and prescribes the size, etc., of the letters to be printed thereon, was held not intended to furnish a standard by which to determine in every case whether or not such company had failed to discharge its duty in respect to giving sufficient warning to the traveling public of the existence of such crossings and the probable approach of its trains. It was intended rather to prescribe the minimum of care which must be observed with respect to the erection and maintenance of signs or other signals of warning at all crossings.

See annotation on this question in 71 A.L.R. beginning on page 369.

**Repairs** — *contractor's bond as to keeping pavement in repair.* The Iowa supreme court in Charles City v. Rasmussen, — Iowa, —, 72 A.L.R. 638, 232 N. W. 137, held that the statutory condition of a street paving bond that the improvement shall be kept in good repair for not less than four years renders the obligors liable only for such repairs as are needed by reason of defective materials or workmanship, and not for those rendered necessary by wear and tear, or for defects in the pavement brought about by any other cause than those arising from defective labor or material.

An annotation in 72 A.L.R. 644, discusses the question of the construction of paving contract or contractor's bond in respect of the contractor's obligation as to repairs.

**School teacher** — *temporary inability as terminating contract.* In Hong v. Independent School Dist. — Minn. —, 72 A.L.R. 280, 232 N. W. 329, the court held that the physical inability of a teacher to commence her services at the beginning of the school year, and for over five weeks thereafter, is such failure of performance of a substantial and material part of the contract as to release the school district therefrom, in the situation here shown.

See annotation on this question in 72 A.L.R. beginning on page 283.

**Succession taxes** — *gift to corporate employees.* In Susan Young Eagan v. Commissioner of Internal Revenue, 71 A.L.R. 863, 43 F. (2d) 881, a bequest of stock in trust to apply dividends in supplementing salaries and wages of the employees of a certain corporation in amounts sufficient, in the judgment of the trustees, to insure to each an income equivalent to a "living wage," in paying an income to any employee at such times as the plant of such company may shut down or at such times as the employee, through no fault of his own, shall be unable to work, and in supplementing a pension fund out of which payments are made to the wives and children of deceased employees, may be deducted from the gross value of decedent's estate in determining the amount subject to Federal estate tax, under a provision authorizing deduction of bequests for charitable purposes.

Annotation on this question appears in 71 A.L.R. beginning on page 870.

**Surface waters** — *duty of lower proprietor.* In Le Brun v. Richards, — Cal. —, 72 A.L.R. 336, 291 Pac. 825, it was stated that the duty of the lower proprietor with respect to surface water was to receive waters naturally flowing from the land of the upper proprietor, provided that the flow is neither accelerated, diverted, nor concentrated by any act of the latter, notwithstanding that the water would

not have reached either tract except for a changed conformation of the country beyond those tracts, brought about by the making of improvements in a street and subdivisions as a result of which the water was diverted from the former channels of the character of depressions or swales.

An annotation on this question appears in 72 A.L.R. 344.

**Taxation** — *franchise tax measured by income.* In Educational Films Corporation v. Ward, 282 U. S. 379, 75 L. ed. (Adv. Ops. 223), 71 A.L.R. 1226, 51 S. Ct. 170, the court decided that a tax purporting to be a franchise tax on corporations, measured by net income, cannot be considered as in reality a tax on income and, as such, one which cannot be imposed in respect of income derived from Federal instrumentalities, where it is not the receipt of income during the preceding fiscal year, but the continuing to do business, which renders a corporation subject to the tax.

See annotation on this question in 71 A.L.R. beginning on page 1237.

**Telephone conversation** — *identification of person talking.* Testimony that a telephone conversation took place between certain persons is inadmissible where there is nothing in the record to indicate the identity of one of the persons between whom the conversation is claimed to have taken place according to the decision of the Massachusetts supreme judicial court in Dorchester Trust Company v. Casey, — Mass. —, 71 A.L.R. 1, 167 N. E. 915.

An annotation follows this case on telephone conversations as evidence.

**Trees** — *fall of on highway.* The United States Court of Appeals for the fourth circuit in Chambers v. Whelen, 72 A.L.R. 611, 44 F. (2d) 340, held that the owner of rural land is not charged with the duty of keeping himself informed as to the condition of trees growing on his property alongside a public road, so that failure to make inspection will render him liable to a traveler on the highway injured by the fall of a tree, especially where a statute imposes on

highway officers the duty of removing all dead timber standing within 50 feet of a highway.

See annotation on this question in 72 A.L.R. beginning on page 615.

**Voting corporate stock** — *validity of agreement as to.* An agreement between stockholders, each owning one fourth of the stock of a corporation, that one of them will at all times be controlled in his judgment and conduct of the affairs of the corporation, and voting his stock, by the desires, wishes, and judgment of the other, is unenforceable as contrary to public policy and fraudulent as to the other stockholders, even though no injury to them has resulted therefrom. Creed v. Copps, — Vt. —, 71 A.L.R. 1287, 152 Atl. 369.

An annotation on validity of agreement to vote stock as directed will be found in 71 A.L.R. 1289.

**Wills** — *disconnected sheets.* The Maine Supreme Judicial Court has held in Re Sleeper, — Me. —, 71 A.L.R. 518, 151 Atl. 150, that a will written on loose sheets of paper may not be refused probate simply because of the opportunity that such a will offers for fraud and a violation of the Statute of Wills.

An annotation on this question may be found in 71 A.L.R. 530.

**Wills** — *renunciation as affecting personal duties under will.* A widow renouncing the provision made for her by her husband's will does not lose the right conferred upon her by the will to select a monument for the testator. Spaulding v. Lackey, 340 Ill. 572, 71 A.L.R. 660, 173 N. E. 110.

An annotation on renunciation of will by spouse and election to take under statute as affecting provisions imposing upon spouse personal duty as trustee, executor, guardian, or the like, follows this case in 71 A.L.R. 665.

**Witnesses** — *nonexpert opinion as to sanity.* The Washington court in State v. Schneider, 158 Wash. 504, 72 A.L.R. 571, held that the testimony of a nonexpert witness is competent under proper conditions to show insanity of the accused in a criminal case.

An annotation on this question appears in 72 A.L.R. on page 579.

## A.L.R. ANNOTATIONS IN VOLUMES 71 AND 72 INCLUDE THESE SUBJECTS

**Age** — Gift to one "provided" or "providing" he attains a certain age as vested or contingent. 71 A.L.R. 1051.

**Amount in Controversy** — Criterion of jurisdictional amount where several claimants are interested. 72 A.L.R. 193.

**Attorneys at Law** — Immunity of nonresident attorney from service of process. 71 A.L.R. 1399.

**Automobiles** — Admissibility of test or experiment after accident as bearing on condition of automobile at time of accident. 72 A.L.R. 863.

**Bail** — Factors in fixing amount of bail in criminal cases. 72 A.L.R. 801.

**Bankruptcy** — Judgment against bankrupt as a lien on property acquired by him between the commencement of bankruptcy proceedings and his discharge. 71 A.L.R. 505.

**Banks** — Deposit of funds exempt from claims of creditors of depositor, as entitled to preference out of the assets of insolvent depositee. 71 A.L.R. 1181.

**Billboard Advertising** — Power of municipality as to billboards and outdoor advertising. 72 A.L.R. 465.

**Breach of Warranty** — Construction, application, and effect of statutory provisions requiring notice of breach of warranty on sale of goods. 71 A.L.R. 1142.

**Carriers** — Liability of railroad company for acts of employees in ejecting trespassers from train. 72 A.L.R. 536.

**Cemeteries** — Constitutionality of statute or ordinance requiring, or permitting, removal of bodies from cemeteries. 71 A.L.R. 1040.

**Champerty** — Champerty rule or statute as applicable to tax sale, execution sale, or judicial sale, or to conveyances by persons claiming under such sales. 71 A.L.R. 592.

**Conditional Sales** — Assignees for creditors as within protection of statute requiring filing or recording of conditional sale contract or chattel mortgage. 71 A.L.R. 981.

**Conflict of Laws** — Law of place of performance, other than that of place where contract is made and transportation commences, as the governing law of carrier's contract. 72 A.L.R. 250.

**Conflict of Laws** — Conflict of laws as to capacity of married woman to contract. 71 A.L.R. 744.

**Corporate Stock** — Liability of promoters for fraud or misrepresentation to persons subscribing for shares after formation of corporation. 72 A.L.R. 355.

**Corporate Stock** — Situs of corporate stock for purposes of probate jurisdiction and administration. 72 A.L.R. 179.

**Corporations** — Request that stockholders as a body sue directors as a condition of right of individual stockholders to bring the action in the interest of the corporation. 72 A.L.R. 628.

**Counterclaim** — Right to voluntary dismissal of suit without prejudice before trial as affected by filing counterclaim after motion for dismissal. 71 A.L.R. 1001.

**Cross-examination** — Cross-examination of character witness for accused with reference to particular acts or crimes. 71 A.L.R. 1504.

**Deeds** — Rule that particular description in deed prevails over general description. 72 A.L.R. 410.

**Direction of Verdict** — Right or duty of court to direct verdict where based upon testimony of party or interested witness. 72 A.L.R. 27.

**Easement** — Extinguishment or modification of easement by parol agreement. 71 A.L.R. 1370.

**Elections** — Determination of facts regarding custody of ballots since original count, as condition of recount. 71 A.L.R. 435.

**Evidence** — Presumption and burden of proof where subject of bailment is destroyed or damaged by fire. 71 A.L.R. 767.

**Evidence** — Relevancy of race, color, nationality, sex, age, etc., of person whose conduct is in question. 71 A.L.R. 1301.

**Executors and Administrators** — Construction and application of statutory provisions excusing under certain conditions compliance with requirement as to filing claim against decedent's estate. 71 A.L.R. 940.

**Expert Witnesses** — Constitutionality of statutes relating to expert witnesses. 71 A.L.R. 1017.

**Forfeitures** — Presence of liquor in vehicle at the time of search and seizure as condition of forfeiture for violating prohibition law. 71 A.L.R. 911.

**Forgery** — Recovery of money paid on forged check. 71 A.L.R. 337.

**Fraudulent Conveyances** — Right of surety or one secondarily liable to bring an action before payment of obligation to set aside fraudulent conveyances by principal. 71 A.L.R. 354.

**Garnishment** — Construction, application, and effect of statute exempting from garnishment debt evidenced by negotiable instrument. 71 A.L.R. 581.

**Gifts** — Presumption or inference as to whether payments were intended as gratuities or as credits on debt. 71 A.L.R. 1024.

**Great Lakes** — Status or title of land bordering on Great Lakes, between meander line and shore line, originally bare or subsequently made bare by reliction or other natural gradual process. 71 A.L.R. 1256.

**Improvement Assessments** — Eligibility of public officer or employee to appointment as member of body to lay assessments for public improvement. 71 A.L.R. 540.

**Income Tax** — Profits on sale of securities or other property, the interest or income from which is exempt from income tax, as exempt from that tax. 71 A.L.R. 1268.

**Insurance** — Prorating provision as applying to mortgagee. 72 A.L.R. 278.

**Judicial Sale** — Effect of receipt of higher bid before confirmation, upon the confirmation of judicial sale. 71 A.L.R. 674.

**Laborer's Equipment** — Provisions of statutes or bonds to secure payment for work or labor as including use of laborer's own team, automobile, or other equipment. 71 A.L.R. 1136.

**Leases** — Construction and effect of provisions of lease as to rights or remedies in event of tenant's failure to vacate. 71 A.L.R. 1448.

**Legal Services** — Undertaking to defend suit or furnish legal services in certain future contingencies as insurance. 71 A.L.R. 695.

**Life Tenant** — Life tenant's liability for waste as affected by assignment or transfer of his interest. 71 A.L.R. 1187.

**Limitations** — Payment by one of two or more joint or joint and several debtors as suspending or tolling limitation. 71 A.L.R. 375.

**Lis Pendens** — Lis pendens as affecting property in county or district other than that in which action is pending. 71 A.L.R. 1085.

**Married Women** — Effect of coverture upon criminal responsibility of a woman. 71 A.L.R. 1116.

**Mechanic's Lien** — Delivery of material as evidence of its use in building, so as to sustain mechanic's lien. 71 A.L.R. 110.

**Medical Services** — Implied or ostensible authority of officer, agent, or employee to engage medical services. 71 A.L.R. 638.

**Mortgage** — Power to mortgage as authorizing insertion of power of sale in mortgage. 72 A.L.R. 158.

**Municipal Debt Limit** — Lease of property by municipality or other political subdivision, with option to purchase same, as evasion of constitutional or statutory limitation of indebtedness. 71 A.L.R. 1318.

**Municipal Indebtedness** — Pledge or appropriation of revenue from utility or other property in payment therefor, as indebtedness within constitutional or

statutory limitation of indebtedness of municipality or other political subdivision. 72 A.L.R. 687.

**Municipal Water Supply** — Constitutionality and construction of statutes and ordinances for protection of municipal water supply. 72 A.L.R. 673.

**Oil and Gas Lease** — Rights of parties to oil and gas lease after expiration of fixed term where production temporarily ceases. 71 A.L.R. 372.

**Physician's Privilege** — Expression of willingness by witness that another should testify as waiver of privilege in respect of latter's testimony. 72 A.L.R. 148.

**Pleading** — May unconstitutionality of statute be raised by demurrer to pleading. 71 A.L.R. 1194.

**Primary Election** — Mandatory or directory character of statutory provision as to time of filing candidate's application or certificate of nomination before primary or election. 72 A.L.R. 290.

**Public Improvements** — Unpaid public improvement as constituting breach of covenant or a defect in the vendor's title. 72 A.L.R. 302.

**Railroad Crossing** — Duty of railroad company to maintain flagman at crossing. 71 A.L.R. 1160.

**Rescission** — Time for rescission by purchaser of chattel for fraud or breach of warranty. 72 A.L.R. 726.

**Safety Appliance Acts** — Locomotives and tenders as within term "cars" in Federal Safety Appliance Acts. 71 A.L.R. 515.

**Schools** — Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges. 72 A.L.R. 499.

**Set-off** — Set-off as between claims by or against bankrupt or insolvent and claims by or against trustee in bankruptcy, receiver, assignee, or trustee in insolvency, arising from transaction after bankruptcy or insolvency. 71 A.L.R. 804.

**State Decisions** — Duty of Federal courts to follow state court decisions as regards torts affecting real property. 71 A.L.R. 1102.

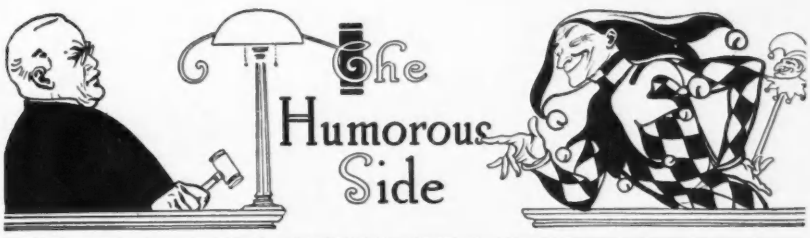
**Statute of Frauds** — Failure to comply with Statute of Frauds as to a part of a contract within the statute as affecting the enforceability of another part not covered by the statute. 71 A.L.R. 479.

**Stock Subscription** — Necessity and sufficiency of notice of withdrawal of subscription to stock in projected corporation. 71 A.L.R. 1345.

**Surety or Guarantor** — Misrepresentations by principal obligor to surety or guarantor as affecting obligee. 71 A.L.R. 1278.

**Trust Property** — Provision for application of rent or income to improvement, restoration, or maintenance of trust property as violation of statute against accumulation of income. 71 A.L.R. 417.

**Uniform Conditional Sales Act** — What amounts to notice which will subject one's rights to an unrecorded conditional-sale contract. 72 A.L.R. 165.




**Mingle a little folly with your wisdom.—*Horace.***

**One on the Lawyer.**—"Witness," asked the attorney for defense, who was trying to prove the temporary insanity of the prisoner, "was it this man's habit to talk to himself when alone?"

"Jest at this time," came the answer, "I don't recolleck ever bein' with him when he was alone."—The Watchman Examiner.

**The Square Judge.**—Senator Wheeler said in Butte the other day, appropos of a suspicious legal decision:

"It reminds me of an Indian judge. The man would always take a bribe from both sides, and then, after giving his decision, he would send for the loser and say:

"You're all right, friend. It's true I've decided against you, but I've written my judgment out in such a way that, when you appeal, the higher court will be bound to reverse me."—Exchange.

**Now Will She Be Good?**—A paper-hanger and a building-repair man testified they had seen him slay his wife—once when he became enraged over finding a shirt unlaundered and again over a necktie.—Pottstown (Pa.) News.

**Too Soon.**—Friend (sympathetically)—"Never mind, don't worry. You will have your husband with you again in a month."

Mrs. Martinson (sobbing)—"Yes—and I thought he would get six."

—Tyrihans (Christiania).

**Alphabet Soup.**—Lawyer—"Don't you think you are straining a point in your explanation?"

Witness—"Maybe I am, but you often have to strain things to make them clear."—Boston Transcript.

**The Wrong Pew.**—An amusing story is told of an incident in a law school classroom. The decision in a particular case appeared to be in accord with the plain intent of the law, but it was obviously unjust to the defendant. "That may be good law," objected one of the students, "but it isn't justice!"

"Quite true," replied the professor, "but if it's justice you want to study, go over to the divinity school; it's law we're studying here."

—Other People's Money.

**Unlicensed Poetry.**—First Collegian—"Do you mean to say you were arrested while driving that wreck of yours? Why, you couldn't possibly speed in that tub!"

Second Collegian—"Who said I was speeding? The police objected to a couple of jokes on the left rear door."

—Motor Land.

**Valuable.**—A robust woman lost her thumb in a trolley accident.

"But why," asked the company's attorney, "do you think that your thumb was worth twenty thousand dollars?"

"Because," she replied, "it was the thumb I kept my husband under."

—Building Owner and Manager.

**Getting the Lowdown.**—"I'd like to know if I can get a divorce from my husband," said the dainty young thing.

"What has your husband done?" inquired the lawyer.

"Is it necessary to say that?" she asked.

"We must, of course, make some charge against him. State what he's done."

"Well, as a matter of fact, he hasn't done anything," she said. "I haven't got a husband, but I'm engaged to a man and I just wanted to see how easy I could get a divorce in case of need."

—Boston Transcript.

**A Slight Error.**—A zealous but untrained reformer had secured permission to speak at the Northampton county jail.

"Brothers," he pleaded with them,

"lose no time in turning to the pathway of righteousness. Remember, we are here today and gone tomorrow."

"Don't kid yourself," came a gloomy voice from the rear, "I got eight years here yet."—Selected.

**Irresistible Impulse.**—Just "a marrying fool with a conscience" who had to play his saxophone for charity as penance for being a record bigamist was the way Bob Golding, traveling musician and soldier of fortune, tearfully described himself in pleading guilty to bigamy in Supreme Court.

"I fought with Kitchener in the Sudan and I've been in five wars," Gooding said, pulling at his gray Van Dyke, "and I've taken my fun where I found it, as Kipling says, and now I must pay for my fun."

"I just couldn't help marrying these women," he added. "I don't know why. My conscience always troubled me and so I played my saxophone for charity in 540 hospitals, 34 prisons and numerous other institutions throughout the country. I raised more than $250,000 in this way and kept almost none of it for myself."—Democrat and Chronicle.

**Well-known Accident.** — Harold H. B—— filed a petition for divorce from an accident in which he was married August 1, 1926.—Omaha Bee-News.

**Spilling the Beans.**—WANTED—An attorney that is willing to work with his client in a conspiracy which has existed for over six years, in which there is about $25,000 involved.

—Ad in the Minneapolis Tribune.

**Oh! Oh!**—Speed Cop—"I'm sorry, lady, You'll have to tell that to the judge in the next town."

Woman Motorist.—"Well, I'm sure he'll listen. He's my husband."—Motor Land.

**On the Quiet.**—Judge: Congratulate me, dear, I have been reappointed.

Wife: Honestly!

Judge: Shh!—Pathfinder.

Case and Comment
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**No Remorse.**—"You have been convicted fourteen times of this offense—aren't you ashamed to own to that?"

"No, your worship. I don't think one ought to be ashamed of his convictions."

**Too Steep.**—A Chicago actress came into a lawyer's office and said, "I want a divorce."

"Certainly," said the lawyer. "For a nominal fee I will institute proceedings."

"What is the nominal fee?"

"Five hundred dollars," he replied.

"Nothing doing" retorted the lady. "I can have him shot for ten."

—Iowa Frivol.

**And Yet They Marry.**—Sweet Young Thing, glancing through a book picked up in fiancé's law office:

"Oh, John! This is all about accidents, and it says here 'the negligence of the parent may be imputed to the child and prevent recovery.' Now, how do they know it can't get well?"

Contributed by Mrs. J. A. Thebault,
Box 1022, Raleigh, N. C.

**Unconvinced.**—Messrs. Waddington and Matthews, Attorneys of Camden, N. J., vouch for this story.

Mr. Matthews had a colored client for whom he was trying a negligence action in which the jury brought in a verdict of $1500 for him.

Immediately upon the announcement of the verdict the colored man elbowed

his way up to the judge and tried to collect the $1500 instanter. Mr. Matthews took him by the arm and explained to him the procedure. The negro, however, insisted that he needed the money "powerful bad" and couldn't wait very long for it. This evidently must have preyed on his mind overnight, for the following morning he called up Mr. Matthews to know whether the check had arrived.

As Mr. Matthews wasn't in, the client was connected with Mr. Waddington who said he knew nothing about it, but that he felt confident that the check had not come in.

To this the colored man replied, "Now I am very, very anxious to get this money. Where can I get hold of Mr. Matthews?"

Mr. Waddington said, "Mr. Matthews is in Atlantic City, today."

Upon hearing this the voice at the other end of the wire replied, "Oh, then he did get the money."

**Tell It to the Judge.**—First Motorist—"I'll get damages for this, I will!"

Second Motorist—"Well, so long, see you suein'."—Motor Land.

**He'll Get the Cream.**—"I'm engaged in the dairy business at present," remarked the lawyer.

"You don't say!" exclaimed his friend, the doctor.

"Fact!" rejoined the legal light. "I'm milking an estate."

**Snappy Comeback.**—Notice: From this date, I will not be responsible for any debts or obligations made by my wife.

G.A.F.——.

———

Notice—I have not purchased anything for cash or credit since I became Mrs. G. A. F.——, Mrs. G.A.F.——.

—Huntsville (Ala.) paper.

**He Knew.**—Judge—"Who was driving at the time of the accident?"

Motorist—"My wife, your Honor."

Motorist's Wife.—"Why, Henry, you know very well that I was in the back seat!"

Judge—"Your objection is overruled, madam. I'm a married man myself."

—Motor Land.

**Trademark.**—St. Peter (at golden gate): "Who comes here!"

Lawyer: "On information and belief—"

St. Peter: "There are too many lawyers here now."

**Justice.**—Prisoner—"Do you think I'll get justice with the jury?"

Lawyer—"No, I think not. I see two men in the box who are opposed to hanging."—Vancouver Province.

**Slight Incapacity.**—An ordinance in Montgomery, Ala. which was before the court in City of Montgomery v. Orpheum Taxi Co., 203 Ala. 103, 82 So. 117, provides "No person shall drive or operate a taxicab who is less than eighteen years of age, or incapacitated from using both feet and both hands to operate the vehicle."

**Better Than None.**—Magistrate—But if you were doing nothing wrong, why did you run when the officer approached you?

Prisoner—I thought he wanted to sell me a ticket for the policeman's annual concert."—Wall Street Journal.

**Actus non facit reum, nisi mens sit rea.**—The following story was submitted by a reader who vouches for its accuracy.

"Shortly after the Civil War, a farmer in Madison County, Virginia, had been missing corn from his crib, so one night he hid in a shed adjoining the corn house to find out who was taking the corn. About nine o'clock, an old colored man, who was an ex-slave, appeared with his little grandson, and the two entered the corn crib. The old man began filling a sack with corn, while the boy played about over the corn pile. After a moment, the farmer heard the little boy exclaim, "Grandpap, here's a great big ear. Put it in the sack." To which the old colored man replied, "No, son. We must take it as we come to it. We's got to treat the man fair."

George Coleman Reedy,
Attorney, Orange, Va.

**Oyer.**—Lawyer's Wife (as they motored by the Trinity Church: Aren't those chimes melodiously beautiful! Such harmony! So inspiring!"

Lawyer—"You'll have to speak louder. Those damned bells are making such a racket I can't hear what you say."

—Selected.